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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM SANDERS, Defendant and Appellant.	B206156 (Los Angeles County Super. Ct. No. NA075479)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Affirmed.

Cynthia A. Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

William Sanders appeals from the judgment entered following a jury trial in which he was convicted of possession for sale of cocaine base (Health & Saf. Code, § 11351.5) with the finding that during the commission of the offense he was armed with a firearm (Pen. Code, § 12022, subd. (c)).[1] He was sentenced to prison for a total of six years and contends the evidence presented at trial was insufficient to support the finding he possessed the cocaine for sale. For reasons stated in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On August 11, 2007, Long Beach Police Officer Aldo Decarvalho was conducting a narcotics surveillance at a residence on Daisy Avenue in Long Beach. He noticed heavy foot traffic coming and going from the residence, consistent with drug sales. He watched a woman ride her bicycle up the driveway of the residence and go out of sight as she reached the back garage area. A short time later she reappeared, riding her bicycle down the driveway out onto Daisy. Officer Decarvalho notified his assisting officers that he witnessed what he believed to be a narcotics transaction, and the woman was subsequently arrested with rock cocaine. The officer, thereafter, obtained a search warrant.

On August 22, 2007, Long Beach Police Officer Toby Benskin, with other officers, arrived at the residence on Daisy in Long Beach to execute the search warrant. One of the officers announced their presence, that they had a search warrant, and that they were demanding entrance. There was a black sheet hanging over the open doorway at the back of the house and, to Officer Benskin, it sounded like someone was "scurrying around." After approximately three or four seconds, one of the officers pulled the sheet back, and Officer Benskin stepped through the doorway. Appellant was sitting on a couch with both hands up. In his right hand, he held a red and white cigarette box, which he immediately stuffed between the seat cushion and the armrest of the couch. When

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[1] He was found not guilty of selling a controlled substance, cocaine (Health & Saf. Code, § 11352, subd. (a)), and not guilty of possession of an unmarked firearm (Pen. Code, § 12094).

Officer Benskin approached appellant and handcuffed him, the officer saw a loaded, operable rifle leaning against the couch. When Officer Benskin first entered the residence, appellant was approximately four and one-half feet away from the rifle. When appellant "dived or made a motion towards the armrest of that couch," he was within six inches of the rifle. The rifle was close enough that appellant could have grabbed it and used it within a minute if needed. After appellant was handcuffed, Officer Benskin recovered from the couch a red cigarette box that said, "Pall Mall." Inside the box there was a clear plastic bindle containing an off-white, rock-like substance. The substance was later determined to contain cocaine base and to weigh 2.18 grams. Also loose in the box was an off-white, rock-like substance later determined to contain cocaine base and to weigh 0.91 of a gram. There were 14 unused small Ziploc baggies loose in a tin box on the coffee table in front of the couch. On the same table, close to the tin box, there was a piece of paper folded to make a crease with an off-white, rock-like substance on the paper. The substance was later determined to contain cocaine base and to weigh .05 of a gram. A silver digital scale and a plastic jack-o-lantern containing .22 caliber rounds in a large Ziploc bag were found on a shelf behind the couch. A total of four scales were found in the residence, but no drug paraphernalia to ingest the cocaine was found. Four or five other people were detained, including a Mr. Childs, who lived at the residence.

Following waiver of his *Miranda*[2] rights, appellant told Officer Decarvalho that he had known the woman on the bicycle for a long time, that he never sold her any narcotics, but had just given narcotics to her.

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

It was the opinion of Long Beach Police Officer Oscar Valenzuela[3] that appellant possessed the cocaine in the cigarette box and on the piece of paper on the coffee table with the intent to distribute and to sell it. His opinion was based on the quantity of cocaine, a total of 3.14 grams. Wholesale value would be approximately $120 to $160 and retail value would be approximately $300 if the substance was broken down into .10 gram increments. A typical dose of crack cocaine would be .05 of a gram, and appellant had approximately 60 individual doses. Additionally, Officer Valenzuela's opinion was based on the fact that four individual scales were found inside the residence, one on the shelf directly behind appellant. Officer Valenzuela learned that individuals who sell narcotics use scales to weigh out a particular quantity to sell and place the amount into Ziploc bags. Appellant had 14 unused Ziploc bags. Officer Valenzuela's opinion was also based on the fact that there was no pipe or any other device that would suggest individuals at the location were consuming the rock cocaine that was found. Additionally, his opinion was based on the fact that on August 11, there were eight to 10 different individuals coming and going from this house within a 30-minute period, consistent with drug sales taking place. One of the individuals was arrested in possession of .31 grams of rock cocaine and a crack cocaine pipe, and appellant admitted he had furnished cocaine to the woman. Officer Valenzuela's opinion was additionally based on the fact that there were guns and ammunition at the residence. It was his experience that individuals who are engaged in the sale of narcotics typically arm themselves, not

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[3] Officer Valenzuela testified he has been a police officer for approximately nine and one-half years. After graduating from the Long Beach Police Academy, he took approximately 112 hours of courses relating to narcotics, its identification, packaging, consumption, and manufacturing, and identification of symptoms exhibited by persons under the influence. He was involved in several hundred narcotics-related investigations, conducted surveillance, and observed individuals buy and sell drugs. He previously purchased rock cocaine in an undercover capacity and arrested over 500 individuals for drug-related charges, for possession of drug paraphernalia, possession of drugs, possession for sales, and for selling and transporting drugs. He has written over 45 search warrants, specifically relating to narcotics, and has confiscated large quantities of narcotics. He has testified in court as an expert more than a dozen times.

necessarily against the police but against rival drug dealers or users who do not have any money and may become desperate. Officer Valenzuela's opinion was also based on the fact that on August 22, 2007, appellant did not appear to be under the influence of a controlled substance. Officer Valenzuela had never met anyone who said he or she could use three grams of rock cocaine in one day.

Appellant testified in his own defense that he was not living at the Daisy residence. He was not sleeping there and had no personal belongings there. Police arrived at the location approximately 10 minutes after he arrived. He was drinking a beer waiting for someone to arrive. He had been at the residence to purchase small amounts of drugs from Mr. Childs. He had been using drugs on and off for approximately 13 or 14 years. On August 22, he had used drugs. He had a crack pipe in a Carnival cigarette box. When he was arrested, he had a small amount of drugs on the table. When the police entered the residence, he was holding a cigarette box which contained a crack pipe. It was not the Pall Mall package. The drugs in the shelf behind him were not his and he was not aware of any baggies. He did not use any scale in the house. Appellant received money from disability payments, work through a temporary agency, and work as a forklift operator.

Officer Benskin was called as a rebuttal witness and testified there was also a red cigarette box on the table, and he had looked inside the box. If there had been a crack pipe or other illegal item inside this cigarette box, he would have collected it as evidence and booked it. There was no smoking device inside the box.

DISCUSSION

Appellant contends there is insufficient evidence to sustain his conviction for possession of cocaine base with intent to sell. We disagree.

"The standard of review is well settled: On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] '"[I]f the verdict is supported by substantial evidence, we

must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder."' [Citation.] 'The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt."' [Citation.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

Health and Safety Code section 11351.5 provides in relevant part: "Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale cocaine base . . . shall be punished by imprisonment in the state prison for a period of three, four, or five years."

"It is well settled that '. . . experienced officers may give their opinion that the narcotics are held for purposes of sale based upon such matters as quantity, packaging and normal use of an individual; on the basis of such testimony convictions of possession for purpose of sale have been upheld.' [Citations.]" (*People v. Parra* (1999) 70 Cal.App.4th 222, 227.) Here Officer Valenzuela testified it was his expert opinion that the rock cocaine was possessed for purposes of sale. He based his opinion on the fact that the quantity of drugs recovered from appellant was approximately 60 individual doses, and that scales used to weigh drugs and empty plastic bags commonly used to package drugs were recovered. Officer Valenzuela's opinion was also based on the fact that no paraphernalia used to ingest cocaine was found in the residence and that appellant did not appear to be under the influence of the drug. Substantial evidence supports the conviction.

While appellant offers other explanations for his possession of cocaine base, it is not the function of the appellate court to substitute its judgment for that of the jury. (See *People v. Ceja* (1993) 4 Cal.4th 1134, 1139.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.